

EXHIBIT G

**Mast Mar. 13, 2024 *Touhy*
Letter**

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March 13, 2024

BY EMAIL

Kathryn L. Wyer
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L St, NW, Room 12014
Washington, D.C. 20005
kathryn.wyer@usdoj.gov

Re: Baby Doe et al. v. Joshua Mast et al., Case No. 3:22-cv-49-NKM

Dear Ms. Wyer:

This letter follows up on our letter dated March 2, 2024 with regard to a *Touhy* request on behalf of our client, Joshua Mast.

As you have requested, we sought the agreement of Plaintiffs in this case on two points. *See* Exhibit A.

1. The Masts sought the Plaintiffs' agreement that documents previously produced to Plaintiffs, by DOJ, in the State court litigation, could be taken out of the *Touhy* approval request because Plaintiffs already have those documents in their possession.
2. The Masts sought the Plaintiffs' agreement that copies of material filed by the United States in the state court proceedings could be taken out of the authorization request because Plaintiffs already have those documents and the U.S. Government has already authorized their use in litigation.

In response, the Plaintiffs have said that they will not respond to these requests without a detailed log of the potentially *Touhy* responsive documents, including those documents in the two categories above that you proposed need not be produced. *See* Exhibit B.

In light of this request from Plaintiffs, we are working to produce a log of these communications for Plaintiffs' consideration. It will require several weeks to complete such a log, which will be provided to Plaintiffs. As part of that process, and once we have a definitive response from Plaintiffs, our intention is to withdraw the

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two categories of documents from the initial request. While Joshua Mast continues to seek the fastest practical consideration of his *Touhy* request, in light of Plaintiffs' position, we wanted to update you on the process for identifying which documents potentially require *Touhy* approval for use in the federal litigation.

Finally, we note for your consideration Plaintiffs' comment that "the U.S. government has never advised Plaintiffs (as the party requesting the documents) or the Court that they cannot be produced because they are subject to, or pending, a *Touhy* review. See 32 CFR 97.9(d)." *Id.* Mr. Mast does not agree with that assertion because he understands the position taken by the U.S. government in this litigation, in light of multiple agencies' *Touhy* regulations, to be that Mr. Mast cannot produce this material in his possession absent written *Touhy* authorization. If you disagree and believe Mr. Mast can produce these documents without *Touhy* authorization, please let us know. Mr. Mast intends to comply with the applicable *Touhy* regulations by seeking authorization for material that appears to fall within the applicable regulations.

As one example, Plaintiffs have repeatedly complained about one email included in Mr. Mast's *Touhy* request that went to a pastor. See MAST_TOUHY_001099–001105. The Mast's understanding is that this document is potentially covered by *Touhy* because it includes official information relating to Baby Doe's recovery from the battlefield in Afghanistan, and is a document in the possession of a covered individual, stored on civilian email. Please let us know if you disagree as to this document. If we do not hear back, we will continue to assume that this document should remain in the category requiring *Touhy* approval with respect to this litigation.

Respectfully submitted,

/s/ Michael L. Francisco

John S. Moran

Michael L. Francisco (*pro hac vice*)

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